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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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7590

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EXAMINER

AUDET, MAURY A

ART UNIT

PAPER NUMBER

1654

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT

PAPER

20070104

DATE MAILED:

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Commissioner for Patents

Applicant's response of 010/13/2006 to the outstanding restriction requirement, with traverse, is acknowledged. The restriction requirement required that Applicant elect a single a) insulin sensitizer and b) peptide fraction, as the invention (the Examiner's basis being that there was no i) core structure or ii) art recognized class, associated with either element of the invention, and thus the groups lacked unity). Applicant agreed with the Examiner's reiteration of the MPEP that "for members of a Markush group to have unity of invention, all members must have a common core structure OR belong to an art recognized class." As to the first prong, Applicant goes on to admit (without argument) that a) insulin sensitizers and b) peptide fractions do not contain a common core structure. [Applicant's comment that "[n]o common core structure is required because no prior art has been cited to establish that "insulin sensitizers" and "peptide fractions" are not special technical features of the invention" lacks merit. To this point, there are an innumerable number of "technical features", those being ANY insulin sensitizer or peptide fraction; however, there is no "special" technical feature, the requirement being "special" (since no core structure has shown to be present among the innumerable insulin sensitizer and peptide fractions (e.g. 2 residue peptide v. 20 residue peptide with completely different structure/amino acids therein, necessitating separate and distinct searches, more than one of which would constitute an undue burden).

However, as to the second prong, Applicant asserts that both a) insulin sensitizers and b) peptide fractions ARE 'art recognized classes' since each 'general' name produced numerous results in the database (which was conducted by the Examiner to show the lack of novelty, not that they are "art recognized class" compounds). By Applicant's own claim limitations, this reasoning is flawed. See by just one example in claim 11 where cinnamon (a spice/flavoring agent) and niacin (a B vitamin with no known spice/flavoring attributes) are quote within an "art recognized class". Were Applicant to have claimed all B vitamin or all like-kind spices/flavoring agents, an "art recognized class" may exist. To art classify a spice/flavoring agent and B vitamin, is like saying all proteins and all carbohydrates belong to the same "art recognized class", or even all proteins belong to the same "art recognized class" - and therefore render unity of invention, and all such structure/compounds must be searched/examined as a single invention. Applicant's arguments have been considered on this point, but are not found persuasive.

However, should Applicant wish to respond that any prior art on any single insulin sensitizer or peptide fraction, will render any other/all insulin sensitizers or peptide fractions, respectively, obvious - the Examiner is willing to accept Applicant's arguments. Absent such admission, lack of unity remains.

Applicant's last argument is that MPEP 803.02 (Markush claims) does not apply to generic limitations such as insulin sensitizers and peptide fractions. [Applicant cites claim 11 as a Markush group, but as discussed above, this Examiner gives no weight to these compounds as falling within an "art recognized class" Markush group.] As to rationale of the present generic limitations, were we talking fenders on cars - Applicant's text-based searching reasoning may apply. However, Applicant, like this Examiner, is

entrenched in the biotechnology art. And once the layers are peeled away in this application, the subject matter is about compounds in combination and compositions and structure searching thereto - the reasonable searches which MUST be carried out to determine patentability. Applicant's lexicography and reasoning that e.g. cinnaon and/or niacin can be coextenstivley 'text-based' searched under the rubric "insulin sensitizer" in combination with coextensively 'text-based' searching e.g. a 2 residue peptide and/or a 2 million residue peptide under the rubric "peptide fraction" - mere examples of pluasible combinations of this invention - is simply illogical and contrary to all reason or common sense.

Applicant's arguments have been considered but are not found persuasive. The requirement stands that neither all insulin sensitizera or all peptide fractions, respectively, either contain a) a common core structure OR b) are members of an art recognized class. Applicant has yet to elect a single insulin sensitizer in combination with a single peptide fraction as the invention. Lack of unity being present, a search of all groups and any combination of any insulin sensitizer AND any peptide fraction of a protein hydrolysate, therein, would constitute an undue burden.

Since the above-mentioned reply appears to be bona fide, applicant is given ONE (1) MONTH or THIRTY (30) DAYS from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

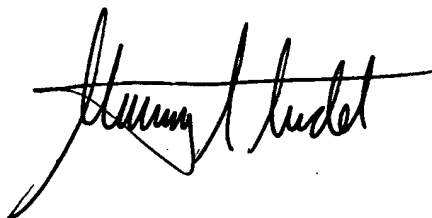
Appropriate correction is required.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maury Audet whose telephone number is 571-272-0960. The examiner can normally be reached on M-Th. 7AM-5:30PM (10 Hrs.). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA, 1/4/2006



MAURY AUDET
PATENT EXAMINER